IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16471 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

HARGOVANBHAI BECHARBAS PATEL & 3 - Petitioner(s)

Versus

SEPCIAL SECRETARY (APPEALS) & 3 - Respondent(s)

==========

Appearance :

MR MAHENDRA K PATEL for Petitioner(s) : 1 - 4.
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 1 - 3.
MR AMIT C NANAVATI for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/09/2005

ORAL JUDGMENT

1. Rule. Shri Dipen Desai, learned AGP waives service of Rule on behalf of the respondent Nos.1 to 3 and Shri Amit Nanavati, learned advocate waives

service of Rule on behalf of respondent No.4. With the consent of learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat, dated 31.12.2004 passed in Revision Application No.19/2002 in allowing the same and quashing and setting aside the order passed by the Prant Officer, Mehsana dated 30.6.2001 and the order passed by the Collector, Mehsana dated 5.9.2002 in canceling the Entry No.892 which was in favour of the petitioners.

3. The petitioners claimed to be the purchasers of the land in question by registered sale-deed dated 1.6.1992 and necessary entry to that effect came to be mutated in the record of rights vide entry No.892 dated 5.10.1996. The said entry was objected to by the respondent No.4 herein and the said entry was treated as disputed entry by Mamlatdar, Mehsana and

thereafter, the Mamlatdar, Mehsana by order dated 22.7.1998 passed in RTS/Case/32/1997, cancelled the entry No.892 which was made in favour of the petitioners on the basis of registered sale-deed. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Mehsana dated 22.7.1998 passed in RTS/Case/32/1997, petitioners preferred appeal No.128 before the Prant Officer, Mehsana and the Prant Officer, Mehsana by its order dated 30.6.2001 allowed the said appeal certifying entry No.892. Being aggrieved and dissatisfied with the order passed by the Prant Officer, Mehsana dated 30.6.2001 passed in RTS Appeal No.128/1998 in certifying the entry No.892, the respondent No.4 preferred an appeal before the Collector, Mehsana and the Collector, Mehsana by its order dated 5.9.2002 dismissed the said appeal. Being aggrieved and dissatisfied with the order passed by the Collector, Mehsana dated 5.9.2002, respondent No.4 preferred Revision Application being Revision Application No. 19 of 2002 before the State Government i.e. Secretary (Appeals), Revenue Department, State of Gujarat and the Joint Secretary (Appeals), Revenue Department,

State of Gujarat vide its order dated 31.12.2004 allowed the said Revision Application quashing and setting aside the order of Prant Officer, Mehsana dated 30.6.2001 and the Collector, Mehsana dated 5.9.2001 and confirming the order passed by the Mamlatdar, Mehsana dated 22.7.1998 while restoring the Entry No.892. Being aggrieved and dissatisfied with the order passed by the Joint Secretary (Appeals), Revenue Department, State of Gujarat dated 31.12.2004 passed in Revision Application No.19/2002, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri M.K.Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that the petitioners are purchasers of the land in question by registered sale-deed and so far as the revenue Authorities are concerned, they are bound to give effect to the registered sale-deed in the revenue records unless those sale-deeds are set aside by the Competent Civil Court. It is further submitted that in the present case, sale-deeds in favour of the

petitioners are not challenged till date and therefore, the Revisional Authority has materially erred in allowing the said Revision Application by quashing and setting aside entry No.892 which was made in favour of the petitioners on the basis of the registered sale-deed. He has relied upon the judgment of the learned Single Judge of this Court in case of Ganeshbhai Manilal Mayavanshi V/s. State of Gujarat and Ors. reported in (2005) 9 GHJ P.634 in support of his above submission.

5. Shri Amit Nanavati, learned advocate appearing on behalf of the respondent No.4 has submitted that in fact the power of attorney in favour of the person who has sold the land in question to the petitioners, was already cancelled by notice which was sent through registered post A.D. Dated 16.9.1976 and therefore, the Power of Attorney holder could not have sold the land in question to the petitioners and hence, the sale transaction in favour of the petitioners is illegal and title in favour of the petitioners is defective. It is further submitted that even according to them, they are in possession

of the land in question till today and therefore it is submitted that in view of the aforesaid facts and circumstances of the case, the Revisional Authority was justified in quashing and setting aside the orders passed by the Prant Officer, Mehsana as well as Collector, Mehsana by restoring and/or confirming the order passed by the Mamlatdar, Mehsana by which entry No.892 in favour of the petitioners, came to be set aside and therefore, it is requested to dismiss the present Special Civil Application.

6. Heard learned advocates appearing on behalf of the parties.

7. It is not in dispute that the petitioners are purchasers of the land in question, who have purchased the same by way of registered sale-deed. The Revenue Authorities are bound to give effect to the sale-deed in the revenue records unless the same is set aside by the Competent Civil Court. It is also not in dispute that till date the sale-deed in question in favour of the petitioners is not challenged by the respondent No.4 before the

Competent Civil Court. Under the circumstances, the Joint Secretary (Appeals), Revenue Department as well as the Mamlatdar, Mehsana were not justified in setting aside the entry No.892 which was made in favour of the petitioners on the basis of registered sale-deed. The aforesaid view of this Court is also fortified by the judgment of the learned Singal Judge of this Court in case of Ganeshbhai Manilal Mayavanshi (Supra). Under the circumstances, the judgment and order passed by the Joint Secretary (Appeals) dated 31.12.2004 passed in Revision Application No.19/2002 in confirming the order passed by the Mamlatdar, Mehsana dated 22.7.1998 in cancelling entry No.892 cannot be sustained and the same requires to be quashed and set aside.

8. For the reasons stated herein above, the petition succeeds. The judgment and order passed by the Joint Secretary (Appeals) dated 31.12.2004 passed in Revision Application No.19/2002 is hereby quashed and set aside. The order passed by the Prant Officer, Mehsana dated 30.6.2001 passed in RTS Appeal No.128/98 as well as the order passed by the

Collector, Mehsana dated 5.9.2002 are hereby restored and consequently, the Entry No.892 in favour of the petitioners made on the basis of registered sale-deed is restored. However, it is made clear that it will be open for the respondent No.4 to challenge the sale-deed in question in favour of the petitioners before the competent Civil Court and as and when such suit is filed, necessary entry can be mutated in the revenue record on the basis of judgment and decree that may be passed by the Competent Civil Court.

9. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

=kailash=